2021 SCPH. No. 507708

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Forgeron v. Nettleton*, 2021 NSSM 50

BETWEEN:

DANA FORGERON

Appellant/Tenant

and

MARIAN NETTLETON (SARAH NETTLETON, Representative)

Respondent/Landlord

Residential Tenancies Appeal from Directors Order #202101496

DECISION

BEFORE: A. Robert Sampson, Q.C., Adjudicator

DATE OF HEARING: Hearing by telephone conference at Sydney and D'Escousse, Nova Scotia on September 14th, 2021

HEARING DURATION: 5:30 pm to 9:35 pm

DECISION RENDERED: **Decision and Order – October 6, 2021**

APPEARANCES:

For the Appellant: Self-Represented – Dana Forgeron

For the Respondent: Self- Represented – Sarah Nettleton on behalf of Landlord, Marian Nettelton.

BY THE COURT:

[1] This Appeal was commenced by a Notice of Appeal filed with the Court on July 16, 2021 arising from an Order of the Director ("Order") dated the 7th day of July, 2021, acting under the *Residential Tenancies Act*, Nova Scotia. The Form A – Notice of Appeal filed by Ms. Forgeron was handwritten and set forth the following reasons for appealing the Order as follows:

(1) Reasonable enjoyment of my Rental Property;
(2) Habitability Covenant;
(3) Violation of Privacy;
(4) Sharing personal info to 3rd party without consent;
(5) No proper notice given for eviction;
(6) Appealing the eviction; and
(7) Relief of money owing.

PRELIMINARY NOTE AND BACKGROUND REVIEW

[2] The Director's file was provided to this Court, which is the established practice, which included the Order of the Director from which this Appeal arises together with copies of the original application (Form J) filed by the Landlord on May 21, 2021 and further, a cross-application (Form J) filed by the Tenant on June 4, 2021. Both were dealt with together by Ms. Chantal Desrochers, Residential Tenancy Officer on behalf of the Director. The evidence submitted to me confirms that the original June 2nd hearing date (by telephone) was used as somewhat of a mediation conference in efforts to determine whether the matters at issue could be resolved between the parties. That proved not to be successful and therefore a formal Residential Tenancy Hearing by telephone with both parties present (both self-represented) occurred on June 21, 2021.

[3] From the Court's file review together with the Order of the Director and the evidence received at this Appeal hearing, the following background information is worthy of note at the outset so that the reasons for this decision can be put in context to the findings made. The evidence from both parties confirms the tenancy first arose on August 1, 2018. The Residential Premises (the "Premises") was located at 115 Pondville Beach Road/North, D'Escousse, Nova Scotia. It consisted of a small home that was said to be approximately 150 years old. The Tenant, Ms. Forgeron, resided at the Premises together with her husband and two sons, age 19 and 16. With reference to the applications placed before the Tenancy Board, the evidence confirms that the start of many of the issues which appear to still remain in dispute, arose in the fall of 2019 which led to the Landlord issuing a Notice to Quit (Form D). This triggered an application by the Tenant to the Director which immediately led to a cross-application by the Landlord. In reviewing the continuation of the file history of the formal matters presented to the Residential Tenancy Board for review, based on the various documents exhibited to me by either one or both of the parties to this Appeal hearing, it appears that many of the issues that were advanced in the Application in November 2020, which resulted in an Order of the Director in December 2020 and later a decision from the Small Claims Court in late March 2021 were similar to those dealt with in the Order of the Director given on July 7, 2021 which this Appeal arises from.

[4] The first Order of the Director (Order # 202002912), arising from a November 18, 2020 Application, was issued on December 29, 2020. This Order, in large measure, dismissed the majority of the Tenant and Landlord's claims, setting aside a Notice to Quit that had been issued by the Landlord and directing that the Tenant comply with the lease or *Act* and pay her rent on time. From the outset both

parties acknowledged that there was a year-to-year tenancy with monthly rent due at $500.00 with the Tenant being responsible for heat and lights. Further, from the evidence both parties were of the belief there was a written lease; however, at no time throughout any of the proceedings to this date was a written lease produced by either.

[5] Following the aforesaid December Order of the Director, the Landlord appealed the Order to the Small Claims Court. That hearing was held by telephone conference on March 15, 2021 and a written decision was rendered by the Court on March 31, 2021. Without the necessity of going into the details of that decision, suffice to say that the adjudicator received evidence on the same issues previously dealt with by the Residential Tenancies Officer and confirmed the Order of the Director. What is important to note at this juncture is the nature of the issues in dispute such as:

- Compensation for expenses incurred by the Tenant;
- Payment of monies (power bill with NSP);
- Repairs - wiring issues and water/mold issues in the basement; and
- Payment of rent on time and arrears.

I have taken the time to note these issues simply because, in the Order of the Director from which this Appeal now before the Court arises, the Tenancy Officers found that all of the issues the Tenant advanced in her Application relating to repairs, payment of monies, relief from rent owing, and compensation for expenses incurred were the very same issues advanced in the original application filed back in November 2020 and determined in December 2020 and re-confirmed on Appeal in late March 2021. For that reason, clearly set out in the July 7th decision and Order of the Director, the Officer had determined to not rule again on the same issues that

were previously placed before and addressed by the Small Claims Court on March 2021. She based her decision on the principle of *res judicata* (the matter has already been heard and determined on appeal). This Court has also reviewed the past Appeal decision as measured against the issues presented to the Director in the June hearing and I concur with her findings.

[6] For the sake of clarity, the Director's Order from which this Appeal is advanced determined that the tenancy of Dana Forgeron (for the reasons stated in her decision) and all other occupants in the residential premises under rent situate at 115 Pondville Beach Road North (the "Premises") be terminated on July 20, 2021 and vacant possession be returned to the Landlord.

[7] As noted at the outset, this Appeal notice was filed on July 16, 2021 which effectively operated as a stay of the July 7th Order. However, it is also worthy of note, in the interim and before the hearing of this Appeal, the Court file reveals an Order from Justice Muise of the Supreme Court responding to a Motion in Chambers by the Tenant granting a stay from eviction arising from yet another application and order of the Residential Tenancy Board and Small Claims Court, dated August 12, 2021, and issued on August 25, 2021. That Order directed that vacant possession of the Premises be given by August 31, 2021.

[8] From the Chambers Judge's brief written reasons for decision, part of the argument advanced by the Tenant was that she had not responded to this most recent application as she believed all of the issues surrounding her tenancy were to be dealt with during the September 14th Appeal hearing. For that reason, she had not filed any Notice of Appeal against the most recent Order of the Director issued

on August 12th nor did she seek any extension to file an Appeal from the Small Claims Court pursuant to such *Act*. I note this for two reasons of concern. **The first** is the fact that Justice Muise highlighted this fact to the Tenant and directed her to immediately "go and file her appeal from the Director of Residential Tenancy in the Small Claims Court" with the hope that this most recent Appeal could also be dealt with by the Small Claims Court during the scheduled September 14th hearing date. Otherwise the Order directed that the stay would remain in effect until October 29, 2021 or such earlier time as the adjudicator may render a decision in relation to the Appeal.

[9] Unfortunately, in receiving the Court files and directives in connection with the Appeal hearing before me, while this issue was brought to my attention through the Court Administration and review of Justice Muise's decision, no further Appeal nor application for extension of time to file a Notice of Appeal has been advanced by the Tenant, Ms. Forgeron, as at the date of this Appeal hearing. Further, during the actual hearing of the matter before me, Ms. Forgeron in her evidence proceeded to provide a summary of these recent matters which took place during the month of August. The Court directed her to the reference in Justice Muise's decision directing her to file a separate Appeal and her only response was that "her internet was not working and the document was still in the que". I believe the "determination of the Appeal" Justice Muise was referencing in the stay order/decision was in anticipation of the Tenant advancing a new Appeal from the August Order of the Director.

[10] As noted, no formal Appeal application has been advanced arising from the most recent (August) Order of the Director. Further from the response I received from Ms. Forgeron I was not able to form any opinion as to what she may be

intending to do. Regardless, I did not have the Director's file information before me, as the trigger for such to be advanced to the Small Claims Court is the filing of a formal Appeal. As such, even if this Court wished to deal with any Appeal arising from the most recent Order of the Director (August) I simply did not have the required information before me (decision, etc.) For certain Ms. Forgeron was made aware of the requirement and specifically that the matters before me would "not" be addressing the most recent Order from the Director made in August.

[11] Therefore, the following decision relates only to matters arising from the Order of the Director dated July 7, 2021, which may well be somewhat moot at this stage given that the Director's August Order to Vacate remains in place unchallenged.

[12] The **second** note of concern relates to the fact that a further determination by the Director has been made and presumably such order was based on evidence of events that arose subsequent to the June hearing up to the date of the most recent Application to the Residential Tenancy Board in August. As noted, as no further action (by way of appeal) has been advanced, at least on its face, and but for the current stay, those determinations leading to a further eviction order have been made. The evidence upon which this most recent Order of the Director was made is not before me and, therefore, but for what is referenced in the Chambers decision I have no idea what the issues were and the evidence adjudicated. Fast forward to the Appeal now before me. The Court readily acknowledges that "Appeals" of this nature, which arise from a decision of a statutory tribunal such as the Residential Tenancy Board/Officer are effectively conducted on the basis of a "*trial de novo*". By that the Court means and explained to the parties that the nature of the proceedings is essentially to re-hear whatever evidence either party wishes to

present as it relates to the issues dealt with on the initial application before the Residential Tenancy Officer. However, in my opinion, this does not open the door to simply ignore the fundamental principles surrounding "*res judicata*". The Court appreciates that the very notion of a *trial de novo* essentially provides to the Appellants a "second kick at the can" which readily includes the opportunity to re-present the initial evidence as well as including any new evidence. However, it is the opinion of this Court that "any and all such evidence" must be such that existed at the time of the application/hearing of the matter leading to the Director's Order at a specific point in time. More directly, on appeal, "new evidence" does not mean new events, similar or otherwise, that may have arisen "subsequent to the hearing and Order under Appeal. I note this and make this determination at this juncture of my decision simply because a great deal of the evidence presented before me related to a host of events that has occurred over the past several months, subsequent to the Director's Order made in July. I surmise, but it is nothing more than a logical guess, that the evidence surrounding at least some of the subsequent events formed the basis for the most recent Director's Order which is not before me for review.

REVIEW OF EVIDENCE ON APPEAL

[13] At the outset the Court reviewed the general procedure to be employed in hearing the Appeal, the role of each party and how evidence was to be received, including the opportunity of both parties to provide their "side of the story", that each would be afforded a chance to question the other and any witnesses, and further that at the end of the evidence each would be afforded a chance to sum up their positions based on all the evidence presented. The parties, who were not

represented by counsel, were placed under oath at the outset as is the practice of this Court when dealing with self-represented parties and each were advised that any comments made by them at any time throughout the proceeding would be considered information given "under oath". The Court further explained that what this Appeal process does not mean nor allow is the re-trial of the same matters that may have already been placed before the Small Claims Court in connection with the previous Appeal (March 2021).

[14] There was a substantial number of exhibits tendered to the Court through each parties' evidence. There were no preliminary issues and each party was satisfied that they had received disclosure of the other's intended documents/exhibits. Of note, many of the documents contained in each party's binders were the same. The Court wishes to note at the outset that while reference to each and every document presented may not be specifically referred to in this decision, the Court wishes to assure the parties that it has taken the time to review all documents tendered.

[15] It is not my intention to provide a detailed re-count of the lengthy evidence given by the Tenant, Ms. Forgeron, and to a lesser extent, the Landlord, whom Ms. Sarah Nettleton represented (with written permission and notice to all). Further, I find for all intents and purposes, Ms. Sarah Nettleton acted in the role of Landlord throughout. The Court wishes to note that a great deal of the Appellant's (Tenant's) evidence did not fall within the parameters of the issues originally advanced in connection with the initial application and cross-application which led to the Order of the Director upon which this Appeal is advanced. Therefore, my review of the evidence of both parties shall be directed towards and follow the

order of issues in dispute which the Director's Order addressed and rendered a determination.

[16] Again both party's documents essentially pieced together a fairly fulsome recount of "all" matters of dispute between them dating back to the fall of 2019 as well as evidence relating to the continuing disputes between the parties that clearly continued to exist up to the time of this hearing. The Court, during the hearing of the Appeal advanced every effort possible to keep the parties focused on what was relevant and admissible as it pertained to the matter before me. Simply put, both parties were biting at the bit, so to speak, to again recount to me the full history of their relationship as Landlord and Tenant dating back to 2018, including matters surrounding the most recent Director's Order, Application to Stay and so forth. The Court notes that while often any evidence in a proceeding is useful to the Court to allow a broader view and place issues in perspective, in this instance, much of the evidence was neither relevant nor provided assistance in determining the specific matter(s) before the Court. Again with reference to the Order of the Director and the determination of the matters now under appeal, based on the relevant and credible evidence received I offer the following summary:

[17] **(i) Payment of Money – Unpaid Rent** - At the time of the hearing on June 22, 2021 leading to the Director's decision and Order, the Landlord had confirmed that the back rent that was owed was paid up to date (April and May 2021). Therefore, no determination was made in the Order on this issue.

ii) Habitually Late Rent - The evidence associated with this issue and reference to documents relating to prior proceedings between the parties support the fact that

the rent due has been habitually late. However, this was not an issue found to be advanced by the Landlord at the initial hearing as confirmed in the Order of the Director nor was it advanced by way of any cross Appeal before me. Therefore, no determination will be made.

iii) Monies Owing by Tenant - This issue related to three separate accounts determined to be owing by the Tenant to the Landlord relating to electricity ($250.00), furnace oil ($248.80) and groceries ($100.00). This issue took both parties back to a great deal of the evidence that had been advanced at the November 2020 hearing and later determined on Appeal. While the Court at that time found the Landlord's record keeping of the rent paid somewhat sloppy, the Court did identify these three items and found that while the Tenant may have been under the impression that she had repaid these amounts owing to the Landlord, in fact the repayment of such amounts resulted in a credit towards the outstanding rent owing. As a result, the effect of the earlier Small Claims Court Appeal decision determined that these amounts remained outstanding and there was no new evidence provided from the Appellant to confirm that subsequent payment, prior to the Director Order, had be made to the Landlord. Therefore, this Court upholds the determination of the Director that the above-referenced sums continue to be owed by the Tenant to the Landlord.

(iv) Entry of Premises - Again the Tenant advanced a great deal of evidence surrounding a number of instances where she felt the Landlord was unreasonable and was not entitled to enter her premises. Evidence from both parties was introduced of instances where the RCMP were contacted to deal with "at the door of the premises" conflicts between the parties arising from the Landlord's attempt(s) to gain entry to the Premises. At no time was there any forcible attempt

by the Landlord but the evidence confirmed there had been repeated attempts. Clearly the evidence from both parties confirmed that there was a great deal of friction between the Tenant and Landlord and often the issues in dispute, such as complaints about the condition of the Premises by the Tenant, I find contributed to or overlapped with the Tenant's reasoning for not allowing the Landlord entry. It was clear from the evidence that the Tenant felt any such attempts by the Landlord to have the Premises inspected was merely for purposes of agitating the Tenant or retaliating for the complaints that had been advanced by the Tenant over the condition of the Premises. Regardless, the Court accepts the various exhibits tendered by the Landlord, many of which were e-mail exchanges with the Tenant or letters or invoices from trade workers who had attended at the Premises to conduct inspections and repairs. Throughout the evidence, most often verified by e-mails between the Parties, the evidence supported that the Landlord "followed the rules" so to speak and gave the required notice. Therefore, the Landlord, as owner of the Premises is afforded the right under the statutory provisions of the *Act* to conduct inspections and, provided proper notice is given, there is no set number. I am satisfied from the evidence that the number of efforts and reasons for such inspections were reasonable and did not in any way amount to any kind of harassment against the Tenant. This Court is completely satisfied that the Tenant's actions were wrong and in violation of her duties and obligations under the *Act*. This Court upholds the Director's decision and re-confirms that the Tenant violated the statutory condition 9(1)(7) of the *Residential Tenancies Act* which relates to entry of premises and supports the determination that such action by the Tenant warrants the claim by the Landlord for termination of the tenancy.

(v) Obligation of the Tenant - The Landlord had advanced the position that the Tenant was in breach of Article 9(1)(4) of the statutory provisions whereby the

Tenant is responsible for the ordinary cleanliness of the Premises and to repair anything that they have damaged. On this issue while there was some evidence presented surrounding a broken pipe in the upstairs bathroom and other miscellaneous items which appeared to be damaged; the Tenant readily acknowledged the same and confirmed her undertaking and more directly her intention to complete the required repairs. Therefore, similar to the finding of the Residential Tenancy Officer I do not find sufficient evidence to determine that there was a breach of this condition by the Tenant.

(vi) Good Behaviour - The Court heard evidence from both parties together with exhibits confirming the post made by the Tenant against the Landlord on social media. I have reviewed the post clearly made under Ms. Forgeron's social media account (Facebook and Messenger) and which specifically called out Sarah Ferguson in a negative manner. Added to this troubling conduct was the fact that she went so far as identifying her as a "teacher" for which the only purpose was to scorn her reputation. The evidence confirmed that the post was placed by the Tenant on her social media in and around early May and that as of the date of the June hearing it remained in the public domain. The Court finds that while it is near impossible to determine the full extent of the exposure/review of such information by the public once placed on different platforms of social media, it is reasonable to infer that for those residing in small communities such as these parties, that the nature of the information is likely to be more readily shared and have a greater impact. The Court rejects the evidence of the Appellant when she suggests that she thought her posting was "private". The Landlord pointed out that comments had been subsequently posted by others commenting on the initial, negative post. The Court finds that the actions taken by the Appellant/Tenant, albeit that the relationship between Landlord and Tenant had become strained, certainly did not

warrant this type of conduct. The post was allowed to remain in the public domain for a period of time after Ms. Forgeron was made aware of the concern which further compounded this issue. I find such action as well as the evidence surrounding Ms. Forgeron's conduct openly in the neighborhood when the Landlord was trying to gain access, by either herself or someone on her behalf was "not" conduct of good behavior and therefore such conduct breached the Tenant's statutory duty as set forth under section 9(1)(3) and further supports the Director's Order for termination of the tenancy and to vacate the Premises.

(vii) Retaliatory Action by Landlord - Again there was a great deal of evidence from the Tenant together with exhibits referenced attempting to tie together actions the Landlord had taken, mainly in efforts to complete an inspection of the Premises, which would occur days after the Tenant had complained to the Landlord and/or Tenancy Board. There was also evidence presented by the Appellant/Tenant surrounding a complaint that someone lodged to the SPCA surrounding her care of the various animals she kept at the Premises. Clearly the Appellant/Tenant believed that the Landlord had reported her. The Landlord flatly denied having contacted the SPCA and I accept her testimony on this point. Otherwise, there was no evidence for the Court to make any determination on this particular issue (SPCA). Based on the evidence presented, this Court is satisfied that the actions taken by the Landlord and the timing of any such actions were within her rights and taken largely out of concern to inspect and protect the Premises. There was simply insufficient evidence for me to overturn the finding of the Tenancy Officer as set forth in the Order of the Director.

[18] As noted earlier on in this Decision, the Tenant had set forth several issues in her written Appeal notice. Some overlap with the matters referenced above. Others appear to stand alone however little or no evidence was advanced before me. The Court is satisfied that the Appellant has not provided sufficient evidence, on balance, to overturn any determinations made by and set forth in the Order of the Director. Therefore, such Order is hereby confirmed by this Court to stand. Further, from a practical standpoint, the date on which vacant possession was to be provided under the Order has long passed. Therefore, this Court further orders that the Appellant/Tenant (Ms. Forgeron) shall provide vacant possession of the Premises to the Landlord on or before Sunday, October 24th at 5:00 pm. Further, as for the sums of monies determined to be owing by the Tenant to the Landlord as set forth in the Order of the Director, such sums shall be payable forthwith.

DATED at Sydney, Nova Scotia this 6th day of October, 2021.

A. ROBERT SAMPSON, Q.C.

Adjudicator